

Decision **DRAFT DECISION OF ALJ BEMESDERFER** (Mailed 5/6/2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39 M) for Authorization under Public Utilities Code Section 851 (1) to Quitclaim an Existing Easement for an Idle 115 KV Transmission Line in Advance of Phase One of Pacific Union Ventures' Residential Development Plan and (2) to Quitclaim a Distribution Easement in Advance of Phase Two and Phase Three of Pacific Union Ventures' Residential Development Plan.

Application 03-03-020
(Filed March 13, 2003)

**DECISION GRANTING IN PART AND DENYING IN PART
APPROVAL UNDER PUBLIC UTILITIES CODE
SECTION 851 FOR QUITCLAIM OF EASEMENTS**

We grant the Application¹ of Pacific Gas & Electric Company (PG&E) for approval of a quitclaim of an existing easement to Pacific Union Ventures under Public Utilities Code Section 851.² We deny the Application to the extent that it seeks approval for quitclaim of an easement not yet granted to PG&E. For the sake of clarity, we discuss each easement separately, although they both relate to the same real estate development.

¹ *Pacific Gas and Electric Company's Application for Authorization Under Public Utilities Code Section 851 to Grant a Permanent Overhang Easement to Delta Energy Center, LLC for an Aerial Crossing of Pacific Gas and Electric Company Property by a Generation Tie Line.*

² All statutory references are to the Public Utilities Code unless noted otherwise.

Background

Pacific Union Ventures (“Pacific Union”) is a real estate developer that has received approval from the City of Oakdale (“City”) to construct, over a fifteen to twenty-year period, a project (“Bridle Ridge”) consisting of approximately 1500 single-family homes, 325 multi-family units, five neighborhood parks, a school, a fire station, and a commercial district. Construction of Bridle Ridge will be in accordance with the terms and conditions of the Bridle Ridge Specific Plan (“Plan”), an amendment to the general plan of the City. Bridle Ridge will be developed on 530 acres of land presently owned by V. A. Rodden, Inc. (“Rodden”), which has entered into a contract to sell the property to Pacific Union.

It is contemplated that Bridle Ridge will be developed in three phases. Phase One, a subdivision of approximately 123.6 acres into 492 single-family residential units, is slated to begin construction in the near future. Pacific Union has not completed plans for Phases Two and Three.

PG&E owns an idle 115 kV transmission line in a private easement that extends across the lands that Pacific Union has slated for development in Phases One, Two and Three. In order to facilitate the development of these lands, Pacific Union has requested that PG&E quitclaim this transmission easement and relocate the overhead facilities in stages that correspond to the timing of Pacific Union’s three phases of development.

The Phase One Easement

With regard to Phase One, PG&E seeks approval to quitclaim the existing transmission easement containing the idle 115 kV line and rephase existing transmission facilities to distribution level facilities. Specifically, PG&E will

remove its existing overhead transmission line within the Phase One project area and relocate the new distribution line to underground, in a public utility easement to be dedicated by Pacific Union in the Phase One project area.

Rodden has requested that PG&E relocate these facilities in the Phase One project area as soon as possible. A relatively small segment of PG&E's existing overhead facilities within the Phase One project area will remain in place. This segment of the line, consisting of five utility poles, will be converted to distribution level facilities and rearranged to serve an existing PG&E customer located outside Pacific Union's project immediately south of the Phase One project area. Rodden will grant PG&E a private easement for these five utility poles on the south end of the Phase One project area.

The Phase Two and Three Easements

PG&E's existing overhead facilities located within the Phase Two and Phase Three project areas will remain in place until such time as Pacific Union has decided to proceed with its development project on these lands. Rodden will grant PG&E a new easement to accommodate these existing facilities. As Pacific Union develops the Phase Two and Phase Three project areas, PG&E's existing overhead facilities will be removed and relocated underground to public utility easements to be dedicated by Pacific Union. Upon relocation of PG&E's facilities within the Phase Two and Phase Three project areas, PG&E will quitclaim the private easement granted by Rodden for such facilities.

The ORA Protest

On April 11, 2003, the Office of Ratepayer Advocates ("ORA") filed a protest pursuant to Rule 44 of the Commission's Rules of Practice and Procedure. ORA did not object to the quitclaim of the easements but to the possibility that

ratepayers might be asked to bear the cost of undergrounding the new distribution facilities to be built in Phases One, Two and Three.

The PG&E Reply

On April 21, 2003, PG&E filed its reply to the protest. In the reply, PG&E acknowledged that “as required by Electric Tariff Rule 20(b), ratepayers will not be responsible for the cost of undergrounding the facilities in this transaction. PG&E will charge Pacific Union the relocation costs under Electric Tariff Rule 20(b).”

The Application

On March 13, 2003, PG&E filed its application, seeking authorization from the Commission to grant the Phase One, Two and Three easements. PG&E’s application is made under Section 851, which requires Commission approval before a utility can sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its property that is necessary or useful in the performance of its duties to the public.³ Quitclaiming an easement is a disposition of property and therefore requires approval under Section 851.⁴

³ Section 851 reads:

No public utility other than a common carrier by railroad subject to Part I of the Interstate Commerce Act (Title 49, U.S.C.) shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void. The permission and approval of the commission to the exercise of a franchise or permit under Article 1 (commencing with Section 1001) of Chapter 5 of this part, or the sale, lease, assignment, mortgage, or other

Footnote continued on next page

Analysis and Action

We grant PG&E's request under Section 851 to quitclaim the Phase One easement. We deny the balance of the Application. We further condition our approval of the quitclaim of the Phase One easement on PG&E affirmatively representing that ratepayers will not be charged for the cost of undergrounding the new distribution facilities.

The basic task of the Commission in a Section 851 proceeding is to determine whether the transaction serves the public interest: "The public interest is served when utility property is used for other productive purposes without interfering with the utility's operation or affecting service to utility customers." (D.02-01-058.) We have reviewed the proposed transaction and find it does not interfere with PG&E's operation or affect its ability to provide service to its customers. The existing 115 kV line is idle. As the property is developed,

disposition or encumbrance of a franchise or permit under this article shall not revive or validate any lapsed or invalid franchise or permit, or enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture. Nothing in this section shall prevent the sale, lease, encumbrance or other disposition by any public utility of property which is not necessary or useful in the performance of its duties to the public, and any disposition of property by a public utility shall be conclusively presumed to be of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser, lessee or encumbrancer dealing with such property in good faith for value; provided, however, that nothing in this section shall apply to the interchange of equipment in the regular course of transportation between connecting common carriers.

⁴ As the Commission previously stated: "The language of Section 851 is expansive, and we conclude that it makes sense to read "encumber" in this statute as embracing the broader sense of placing a physical burden, which affects the physical condition of the property, on the utility's plant, system, or property." (D. 92-07-007, 45 CPUC 2d 24, 29.)

new customers will receive service from the distribution lines installed in place of the existing transmission lines. An existing customer will receive service from that portion of the existing line that remains in place after quitclaiming the easement to Pacific Union and/or Rodden. While ratepayers will receive no direct monetary benefit from abandonment of the easement, development of the property in accordance with an environmentally sound plan is a productive purpose. Accordingly, the quitclaim of the existing 115 kV transmission line easement is in the public interest and should be approved.

The Phase Two and Three easement presents a different problem. As outlined in the application, PG&E has not yet been granted the easement that it intends, at an indeterminate future date, to quitclaim. Because of the long-term nature of the Bridle Ridge project, PG&E might not be granted that easement for ten or fifteen years, at which time the character of the project, the needs of the utility, and the nature of the environmental issues may all have changed. Furthermore, Section 851 requires approval for transfers of utility-owned property. Because PG&E does not yet own even so much as an equitable interest in the property that it intends some day to quitclaim, we do not see that the statute authorizes us to approve the transaction. Accordingly, we deny that part of the application that seeks approval for the transfer of the easement to be acquired in connection with the development of Phases Two and Three. When PG&E has acquired the subject easement, it may reapply to the Commission for authorization to abandon it.

Environmental Review

Because the California Environmental Quality Act (“ CEQA”) applies to discretionary projects to be carried out or approved by public agencies and because the Commission must act on the Section 851 application and issue a

discretionary decision without which the project cannot proceed, the Commission must act as either a Lead or Responsible Agency under CEQA. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA guidelines Section 15051(b)).

In this case, the City of Oakdale (“City”) is the Lead Agency. The CPUC is a Responsible Agency for this proposed project. CEQA requires that the CPUC consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Commission must consider the environmental consequences of a project that is subject to its discretionary approval, and the Commission must consider the Lead Agency environmental documents and findings before acting upon or approving the project. (CEQA guidelines 15050(b)). The specific activities that must be conducted by a Responsible Agency are contained in CEQA guidelines Section 15096.

A brief summary of the City’s environmental review of the Bridle Ridge project is as follows:

On January 21, 1999, the City filed a Notice of Determination (“NOD”) in accordance with Section 21108 or 21152 of the Public Resources Code, approving the Bridle Ridge Specific Plan (“Plan”). The NOD approved and adopted the City’s Mitigated Negative Declaration (MND) and Initial Study for the Bridle Ridge General Plan Amendments/Specific Plan (SCH#: 98102084) including the entire proposed 530-acre development within the City’s southwest sphere of influence. The environmental documents found that with implementation of mitigation measures, the project will not have a significant effect on the environment. Accordingly, mitigation measures were made a condition of approval and a Mitigation and Monitoring Plan was adopted. The Plan identifies the timing of all mitigations, what entity is responsible for

implementation, what entity has verification responsibility and what method of verification is to be employed. We have reviewed and considered the environmental documents and find that these documents are adequate for our decisionmaking purposes under CEQA. The City adopted mitigation measures including the requirements for: specific roadway and crossing measures related to Crane Road, F Street, Gregar Road and J Street; landscaping and grading for lots with certain grades; preservation of certain existing native trees and the planting of new native trees; preconstruction surveys to determine the presence of burrowing owls; traffic analysis and the interconnection of traffic signals; lighting systems around parking lots and park areas; and specified sound protection in home construction. We find that the City adopted reasonable and feasible mitigation measures to either eliminate or reduce the potential environmental impacts to less than significant levels. Accordingly, we adopt the City's requirements under the Mitigation and Monitoring Plan for purposes of our approval.

Comment on Draft Decision

The 30-day public review and comment period otherwise required by Public Utilities Code Section 311(g)(1) may be shortened by stipulation of all parties, pursuant to Section 311(g)(2) and Rule 77.7(g). The parties to this matter having stipulated to a shortened public review and comment period, the period is reduced from 30 days to 15 days.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Karl J. Bemmesderfer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In order for Pacific Union to develop the Bridal Ridge project, it is necessary for PG&E to quitclaim an idle 115 kV transmission line easement that crosses the property on which the development will occur.
2. Quitclaim of the easement will not impair PG&E's ability to provide service to the public.
3. Ratepayers will not be charged the cost of relocating the transmission line.
4. In order for Pacific Union to develop Phases Two and Three of the Bridal Ridge project, it will be necessary for PG&E to quitclaim an easement that it has not yet been granted.
5. The City of Oakdale is the lead agency for environmental review under CEQA.
6. The Commission is a responsible agency for environmental review under CEQA.
7. The Commission has reviewed the City's environmental documents for the Bridle Ridge Specific Plan and finds these documents adequate for our decisionmaking purposes.
8. In approving the Bridle Ridge Specific Plan, the City adopted mitigation measures as a condition of approval and found that with implementation of those measures, the project will not have a significant effect on the environment.

Conclusions of Law

1. Authorizing the quitclaim of PG&E's existing idle 115 kV transmission line easement over property to be developed pursuant to the Bridal Ridge Specific Plan is in the public interest.

2. Authorizing the quitclaim of the easement to be granted to PG&E at an indeterminate future date in connection with development of Bridal Ridge Phases Two and Three is not in the public interest.

3. We find that the City adopted feasible and reasonable mitigation measures to either eliminate or reduce the potential environmental impacts to less than significant levels and we adopt the requirements under the Mitigation and Monitoring Plan for purposes of our approval.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company's (PG&E) Application for authority to quitclaim an existing easement in connection with development of the Bridal Ridge project is granted, subject to PG&E representing to the Commission that ratepayers will not be charged for the cost of undergrounding the distribution lines.

2. PG&E shall charge the cost of relocating the transmission line to the developer pursuant to Electric Tariff Rule 20(b).

3. PG&E's Application for authority to quitclaim an easement to be acquired in connection with development of Phases Two and Three of the Bridal Ridge project is denied, without prejudice.

This order is effective today.

Dated _____ at San Francisco, California.